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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/797,914	03/10/2004	James W. Evans	10841-1	3384

7590 05/21/2007  
National IP Rights Center, LLC  
Suite 400  
550 Township Line Road  
Blue Bell, PA 19422

EXAMINER
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HOPKINS, CHRISTINE D

ART UNIT	PAPER NUMBER
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3735

MAIL DATE	DELIVERY MODE
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05/21/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

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<b>Office Action Summary</b>	Application No. 10/797,914	Applicant(s) EVANS, JAMES W.	
	Examiner Christine D. Hopkins	Art Unit 3735	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 February 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 4 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 4 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### DETAILED ACTION

1. This Office Action is responsive to the Amendment filed 26 February 2007.

Claim 4 is now pending. The Examiner acknowledges the amendments to claim 4, as well as the cancellation of claims 1-3 and 5-10.

2. It appears that Applicant has utilized an incorrect status identifier for the claims in the Amendment filed 26 February 2007. The status identifier "Withdrawn" is used with regards to a restriction requirement. Since no such restriction requirement has preceded this Office Action, the claims labeled as "Withdrawn" will be addressed as "Canceled."

### *Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claim 4 is rejected under 35 U.S.C. 102(b) as being anticipated by Widjaja et al. (U.S. Patent No. 5,599,274). Widjaja et al. (hereinafter Widjaja) disclose an audio-visual unit that aids in relaxation. Referring to claim 4, Widjaja teaches a visor **52** having translucent shield, or screen **56**, and spacer **53** capable of blocking ambient light outside a particular color spectrum based on the thickness of the spacer (col. 4, lines 27-40). The light emitted by the LEDs **54** (disposed within the visor **52**) is diffused by the "shield" **56** and may flash or "oscillate" to alert inhalation or exhalation. The intensity

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of the LEDs **54** may change or become greatly reduced, thus allowing the light to become "dim" (col. 6, lines 4-20). Widjaja further teaches a light signal from the LEDs in the form of a flash, and an audio signal that mimics a binaural beat occurring every six seconds, or "approximately" every five seconds (col. 20, lines 27-32). Moreover, Widjaja teaches that the visual signal may have a frequency corresponding to that of the binaural signal (col. 21, lines 12-16), thus providing visual stimulus by the LEDs that may signal the user to inhale and exhale at approximately five second intervals. A control module **10** is connected to the user's device containing the LEDs via cable **13** (col. 3, lines 48-56). The LEDs produce light and are regulated by a signal intensity control **26** housed within the control module **10** (col. 5, lines 6-8). Control module **10** is *capable* of being affixed to a user's belt. No further structure is provided by the limitation.

### ***Response to Arguments***

5. Examiner acknowledges the amendment of the application claiming the benefit of Provisional Application No. U.S. Serial No. 60/452712.

6. Applicant's arguments filed 26 February 2007 with respect to the objection to claims 1, 5 and 10 have been fully considered and are persuasive in view of being withdrawn from consideration. The objection to claims 1, 5 and 10 has been withdrawn.

7. Applicant's arguments filed 26 February 2007 with respect to the rejection of claims 7-10 under 35 U.S.C. 112, second paragraph, have been fully considered and are persuasive in view of being withdrawn from consideration. The rejection of claims 7-10 has been withdrawn.

8. Applicant's arguments filed 26 February 2007 with respect to the rejection of claims 4-7 and 9-10 under 35 U.S.C. 102(b) citing *Widjaja et al.* ('274) have been fully considered and are not persuasive. Applicant contends that the device of the instant application has been specifically designed to be portable, is smaller than that of *Widjaja* and can be easily packed and carried for traveling. However, this argument is not persuasive. In response to Applicant's argument, it is noted that the features upon which applicant relies are not recited in the rejected claims. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Claim 4 recites a device to irradiate the wearer's eye and makes no mention of a device that is portable or of smaller dimensions. In view of the foregoing, the rejection of claims 4-7 and 9-10 under 35 U.S.C. 102(b) citing *Widjaja et al.* ('274) has been maintained.

9. Applicant's arguments filed 26 February 2007 with respect to the rejection of claim 8 under 35 U.S.C. 103(a) citing *Widjaja et al.* ('274) in view of *Koyama et al.* ('936) have been considered but are moot in view of the cancellation of claim 8 and the

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alternate interpretation citing Widjaja et al. ('274). Applicant has amended claim 4 such that the control box is "capable of being affixed to a user's belt." This limitation is directed towards the intended use of the claimed invention. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Since the control box of Widjaja may be attached to a user's belt regardless of the size of the control box, Widjaja meets the claim.

### ***Conclusion***

Applicant's amendment necessitated the new grounds of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christine D. Hopkins whose telephone number is (571) 272-9058. The examiner can normally be reached on Monday-Friday, 7 a.m.-3:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor, II can be reached on (571) 272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Christine D Hopkins  
Examiner  
Art Unit 3735



Charles A. Marmor, II  
Supervisory Patent Examiner  
Art Unit 3735